IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs November 18, 2008

STATE OF TENNESSEE v. KENDRELL GOODWIN

Direct Appeal from the Criminal Court for Hamilton County
No. 247771 Don W. Poole, Judge

No. E2008-00730-CCA-R3-CD - Filed January 8, 2009

In 2004, the Defendant, Kendrell Goodwin, pled guilty to one count of possession of a dangerous weapon, one count of domestic aggravated assault, and one count of failure to appear. The trial court sentenced him to an effective four-year sentence, to be served on probation after a period of confinement. In 2005, the trial court revoked the Defendant's probation and ordered him to serve 120 days, with the balance of the sentence to be served on community corrections. In 2006, a probation violation report was filed based upon a new arrest and conviction. The trial court revoked the Defendant's community corrections sentence, and the Defendant appeals, contending that there was no evidence that he willfully violated the conditions of his sentence. After a thorough review of the record and applicable authorities, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JAMES CURWOOD WITT, JR., JJ., joined.

Ardena J. Garth, Chattanooga, Tennessee, for the Appellant, Kendrell Goodwin.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Elizabeth B. Marney, Assistant Attorney General; William H. Cox, III, District Attorney General; Lance Poe, Special Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION
I. Facts

At the hearing on the Defendant's 2006 probation violation warrant, the following evidence was presented: The State first summarized the procedural history, stating that, on April 19, 2005, the Defendant agreed to the revocation of his original probation. The trial court ordered him to serve 120 days in the local workhouse and serve the balance of his sentence on

community corrections. In April of 2007, the Defendant pled guilty in another case. As a result, the trial court again revoked the Defendant's probation, ordered that he serve sixty days, and ordered the balance of his sentence be served on community corrections. Subsequently, Chris Jackson, a Hamilton County Community Corrections Officer, filed another probation violation warrant.

Chris Jackson testified that he filed the initial capias request in this case because the Defendant tested positive for cocaine on July 5, 2007, and also because the Defendant was arrested on July 21, 2007, for driving on a revoked license. Further, the Defendant was charged on July 26, 2007, for possession of drug paraphernalia and criminal conspiracy. Jackson recommended that the trial court revoke the Defendant's community corrections sentence. He further noted that the Defendant's original convictions were violent offenses, making him an unacceptable candidate for the community corrections program.

Christina Young, a lieutenant at the Siverdale Detention Center, testified that she was assigned as the gang investigator at the facility where the Defendant was also an inmate. She interviewed him on August 8, 2007, as part of a normal gang interview. In October 2007, after an incident at the jail, Young began monitoring the Defendant's phone calls. In January 2008, during two separate phone calls, the Defendant mentioned that he would "escape" or leave his community corrections confinement when released from jail. Young also testified that the Defendant was investigated and charged with aggravated assault for an incident that occurred in jail on October 4, 2007. On cross-examination, Lieutenant Young testified that she did not think the Defendant was joking when he mentioned escaping from confinement.

The Defendant testified that he understood that this was not his first probation revocation hearing. He said that he wanted another chance because he had made many "foolish mistakes" as a result of his drug problem. The Defendant said he had attempted to receive drug treatment while incarcerated. He was on the waiting list for CADAS, a residential drug treatment program, but he had not yet been accepted. The Defendant explained that he was joking when he mentioned escaping if he was placed in CADAS. The Defendant further said that he had also attempted to receive anger management treatment while incarcerated, but he and the "anger management lady, the counselor, we kind of got into it." He agreed he was in need of drug treatment.

The Defendant said that he had never been charged with escape or resisting arrest. He asked that the court allow him to seek drug treatment and not revoke his probation.

Upon questioning by the court, the Defendant testified that he had already served his time on his new driving and drug convictions. Further, he said that it was because of those convictions that he was currently incarcerated. He completed his time on those convictions on January 21, 2008, two months before the hearing in this case.

On cross-examination, the Defendant admitted that he failed a drug test while on probation. Further, he said he purchased the drugs involved in this case from a drug dealer. The Defendant agreed that he was charged with driving without a license in a separate incident and

that he pled guilty to that charge. Five days after that charge, he was charged with possession of cocaine. This was the second time he purchased drugs while on probation. He pled guilty to the possession charge. The Defendant agreed that he was first placed on unsupervised probation, then on intensive probation, and then on community corrections. He also conceded that he had now violated his community corrections sentence.

Based upon this evidence, the trial court revoked the Defendant's community corrections sentence and ordered him to serve the balance of his sentence in prison.

II. Analysis

On appeal, the Defendant contends that the record does not contain sufficient evidence to support a revocation of his community corrections sentence. He acknowledges his new arrest, but he argues that he had not yet had a hearing on the new charges and had not been convicted of any new offenses. Further, he asserts that, while he may have tested positive for drugs, his use of drugs "was as the result of a serious addiction and not willful in the traditional sense." The State counters that the evidence of the Defendant's violation of his probation is "overwhelming" and supports the trial court's decision.

A trial court may revoke a defendant's community corrections sentence based on the defendant's conduct and the defendant's noncompliance with the conditions of the community-based programs. T.C.A. § 40-36-106(e)(3)-(4) (2006). Such a decision is within the trial court's discretion, and this court will not disturb a trial court's revocation judgment unless there is "no substantial evidence" that a "violation of the conditions of [the community corrections program] has occurred." *State v. Harkins*, 811 S.W.2d 79, 82-83 (Tenn. 1991) (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978) and *State v. Delp*, 614, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)) (adopting the probation violations standard for a community corrections program violation due to the sentences' similar nature). In other words, the trial court must find proof of a community corrections violation by a preponderance of the evidence. T.C.A. § 40-35-311(e) (2006); *State v. Joe Allen Brown*, No. W2007-00693-CCA-R3-CD, 2007 WL 4462990, at *4 (Tenn. Crim. App., at Jackson, Dec. 20, 2007), *no Tenn. R. App. P. 11 application filed*. We note that "only one basis for revocation is necessary," and a defendant's admission that he violated the conditions of his release to the community corrections programs is sufficient evidence for such a revocation. *Brown*, 2007 WL 4462990, at *4 (quoting *State v. Alonzo Chatman*, No. E2000-03123-CCA-R3-CD, 2001 WL 1173895, at *2 (Tenn. Crim. App., at Knoxville, Oct. 5, 2001), *no Tenn. R. App. P. 11 application filed*) (citing *State v. Johnson*, 15 S.W.3d 515, 518 (Tenn. Crim. App. 1999)).

In some instances, a trial court must find that a violation was willful in order to revoke community corrections based solely on that violation. In particular, where the only violation alleged against a defendant is his or her failure to pay fines or fees, the trial court must find that the violation was willful in order to revoke community corrections. *State v. Bernita Hogan*, No. M2002-00808-CCA-R3-CD, 2003 WL 1787312, at *3 (Tenn. Crim. App., at Nashville, Apr. 4, 2003) ("When the defendant's violation of probation is based on failure to pay restitution or fines, the trial court must determine the reasons behind the failure to pay. . . . If the court finds

the nonpayment results from either the defendant's willful refusal to pay or failure to make bona fide efforts to obtain the means to pay, the defendant's probation may be revoked."), *perm. app. denied* (Tenn. Sept. 8, 2003). However, we emphasize that a finding of willfulness is necessary only for violations that involve non-payment. *Hogan*, 2003 WL 1787312, at *3. If a ground other than non-payment exists upon which to base the revocation, a trial court need not find any violation to be willful. *State v. Joshua P. Lomax*, No. M2005-02854-CCA-R3-CD, 2007 WL 49551, at *2 (Tenn. Crim. App., at Nashville, Jan. 5, 2007) ("[T]he Defendant pled guilty to violating his sentence based on a warrant that alleged not only that he had failed to pay court costs, but also that he had tested positive for drugs, failed to complete his required community service work, and failed to maintain regular employment. . . . The trial court was not required to further inquire into the defendant's ability to pay court costs."), *no Tenn. R. App. P. 11 application filed*.

If the trial court revokes the defendant's community corrections sentence, then it may "resentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum sentence provided for the offense committed, less any time actually served in the community-based alternative to incarceration." T.C.A. § 40-36-106(e)(4). The Supreme Court has said that "the sentencing of a defendant to a community based alternative to incarceration is not final, but is designed to provide a flexible alternative that can be of benefit both to the defendant and to society." *State v. Griffith*, 787 S.W.2d 340, 342 (Tenn. 1990). Moreover, a "defendant sentenced under the [Community Corrections Act] has no legitimate expectation of finality in the severity of the sentence, but is placed on notice by the Act itself that upon revocation of the sentence due to the conduct of the defendant, a greater sentence may be imposed." *Id*.

If a trial court revokes a defendant's release into the community corrections program, it must then decide whether to re-sentence the defendant. When deciding whether to sentence a defendant to confinement, a trial court should consider whether:

> (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
> (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
> (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.

T.C.A. § 40-35-103 (2006).

In this case, the trial court stated the following when it revoked the Defendant's probation:

> This is a case of Kendrell Goodwin. He stands before the court today in regard to the first case number, 247771, . . . domestic aggravated assault and received a four year sentence, failure to appear, a one year sentence and the drug

case was two years. So the two years is concurrent with the other cases.

Mr. Goodwin, I don't think there is any doubt about it, sir, that you violated the terms of your community corrections, your probation. There is no question about it. By the proof I've heard, you've got three or four cases. Driving on [a] revoked [license] which in and of itself is not particularly serious but you picked that up and then a few days later, possession of cocaine and drug paraphernalia in this criminal conspiracy I guess, all misdemeanors. All of these things are not good, especially when you are on community corrections and that bothers me. I am sure [your attorney] has told you that. It appears to me that you have had three or four chances. The original plea, you did serve eleven months and twenty-nine days I guess on the four years. [Defense Counsel] it looks like he came back later after being placed on supervised probation and violated that and served another hundred and twenty days with the balance on intensive probation, picked up another case later and served another sixty days with the balance on community corrections.

It appears to me, and I sympathize with the problem about drugs, I really do. I know if you get hooked on drugs, it's very, very, very hard to get off of drugs. I hope you can get some help from that. It's just too much. There ought to be some uniformity if somebody violates supervised probation, they violated intensive probation, they violate community corrections. I haven't considered the other case that this lady from the workhouse mentioned but certainly the calls about the CADAS and so forth leaves me a little nervous about following through with what may be some kind of help that [the Defendant's Counsel] recommended.

I will do this and I would hope that it would be some help to you and maybe get some things out of the way as you go in. 259536, which are the three misdemeanor convictions, I am going to dismiss that petition.

Based upon the proof, by the preponderance of the evidence of the new cases, the new convictions, the other things that we have heard, sir, I am going to violate your probation in regard to 247771. I trust that you have served a lot of that sentence, I really sincerely hope that you have and I sincerely hope that you can get some help. I am going to revoke that and I'll dismiss the other one which as I said might help some in regard to how they keep up with you. Good luck to you.

After a review of the record, we conclude that there is ample evidence to support the trial court's finding that the Defendant violated his probation and that he should serve the remainder of his sentence in confinement. The trial court predicated its revocation of the Defendant's probation upon multiple violations, none of which involved the repayment of fines. Therefore, a finding of willfulness was not necessary for the trial court to revoke the Defendant's probation. The Defendant has violated his probation multiple times, and, most recently, tested positive for

cocaine and was also arrested on multiple charges to which he pled guilty. These violations were sufficient bases for the probation revocation.

Further, when ordering confinement, the trial court noted that the Defendant was originally ordered to serve his sentence on unsupervised probation, which he violated. He was placed on intensive probation, which he also violated. Then, he was placed on community corrections, which he violated. Thus, the trial court considered whether "measures less restrictive than confinement [had] frequently or recently been applied unsuccessfully to the [D]efendant." T.C.A. § 40-35-103(c). As such, the trial court properly ordered that the Defendant serve the remainder of his sentence in confinement. The Defendant is not entitled to relief on this issue.

III. Conclusion

After a thorough review of the record and the applicable law, we conclude the trial court properly revoked the Defendant's community correction sentence and properly re-sentenced him to serve the remainder of his sentence in confinement. As such, we affirm the trial court's judgment.

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ROBERT W. WEDEMEYER